

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
Procedures for Commission Review of State Opt-Out)	PS Docket No. 16-269
Requests from the FirstNet Radio Access Network)	
)	
)	
Implementing Public Safety Broadband Provisions of)	PS Docket No. 12-94
the Middle Class Tax Relief and Job Creation Act of)	
2012)	
)	
)	
Implementing a Nationwide, Broadband, Interoperable)	PS Docket No. 06-229
Public Safety Network in the 700 MHz Band)	
)	
)	
Service Rules for the 698-746, 747-762 and 777-792)	WT Docket No. 06-150
MHz Bands)	

**COMMENTS OF
THE FIRSTNET COLORADO GOVERNING BODY**

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SUMMARY

The development and implementation of the Nationwide Public Safety Broadband Network (NPSBN) is a critical endeavor that must ultimately be judged by a single metric: does the network provide the necessary communications to local, tribal, and state first responders? It is with this overarching question in mind that the FirstNet Colorado Governing Body (FNCGB) submits these comments to the Federal Communications Commission (FCC or “the Commission”) concerning the development of its process to determine the ability for a state alternative Radio Access Network (RAN) plan to meet the technical interoperability requirements.

In the Middle Class Tax Relief and Job Creation Act of 2012 (“the Spectrum Act”), Congress created two options for states to choose in the deployment of the NPSBN: 1) a state RAN plan developed by the First Responder Network Authority (FirstNet); and 2) state alternative RAN plans developed by the states themselves. While ideally the FirstNet developed plans would serve the needs of every state, Congress was keenly aware that the needs of first responders can vary drastically by state and wisely included a provision for states to ‘opt-out’ and implement their own RAN as long as it is interoperable with the national network. As we will discuss further, the FNCGB believes the Commission must develop a process that is fair, equitable and does not artificially hinder the ability for states to exercise their statutory rights given to them by Congress. In summary, our key points are:

- The FCC should take a position that having a state alternative plan and releasing a state Request for Proposal (RFP) satisfies the 180-day deadline required by the Spectrum Act.
- States should be held to the same standard that FirstNet has established regarding timing for awarding a contract pursuant to an RFP.

- The FCC's process should be expeditious, clear, and focused on the technical aspects of a state alternative plan.
- A state should have the ability to supplement and amend its initial submission to the FCC.
- The overall focus of the alternative plan review process should be to allow a state to exercise their right to implement a state-specific RAN as long as they meet the basic provisions outlined by the Spectrum Act.

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**COMMENTS OF
THE FIRSTNET COLORADO GOVERNING BODY**

These Comments are filed by the FirstNet Colorado Governing Body (FNCGB), in response to the Notice of Proposed Rulemaking (“NPRM”), released August 26, 2016, in the above-entitled proceeding.¹

I. INTRODUCTION

A. Background on the Colorado FNCGB.

The FirstNet Colorado Governing Body (FNCGB), representing public safety stakeholders throughout Colorado, appreciates the opportunity to respond to the notice regarding Federal

¹ Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network, Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012, Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, Service rules for the 698-746, 747-672 and 777-792 MHz Bands, PS Docket Nos. 16-269 Report and Order and Notice of Proposed Rulemaking, 16-269, 12-94, 06-150 (rel. Aug. 26, 2016) (hereinafter “NPRM”).

Communications Commission's (FCC's or "the Commission's) procedures to review the state opt-out process as it relates to the First Responders Network Authority (FirstNet) initiative. The implementation of the National Public Safety Broadband Network (NPSBN) will have dramatic impacts on public safety communications in state, tribal, and local jurisdictions for decades to come and the FCC's process of reviewing opt-out plans will play a critical role in ensuring states are able to implement the best solution to meet their unique needs.

The FNCGB provides a unique perspective to the FirstNet planning effort for many reasons. First, Colorado is home to one of only 5 pilots of a Public Safety Broadband Network (PSBN) in the entire nation: The Adams County 911 Center (ADCOM 911) which became operational in June 2014. The ADCOM 911 PSBN provides dedicated 4G Long Term Evolution (LTE) capabilities to public safety in Adams County, using an Evolved Packet Core (EPC), Radio Access Network (RAN), and User Equipment (UE) funded through the NTIA Broadband Technology Opportunities Program (BTOP). Additionally, the Public Safety Communications Research (PSCR) labs and the FirstNet Technical Headquarters are located in Boulder, Colorado. Colorado also has extensive existing infrastructure and years of experience with statewide system of systems planning and construction. Finally, Colorado has a unique perspective as the country's 8th largest state and one of most topographically and demographically diverse.

II. OPT-OUT PROCEDURES SHOULD BE EASY, FLEXIBLE AND PRACTICAL

The FCC seeks comment on the procedures by which states that choose to opt-out of the FirstNet RAN will submit plans to the Commission for review. As a guiding principle, it is the FNCGB's strong belief that states which decide to opt-out should not be put at a competitive disadvantage in comparison to states that choose to opt-in to the FirstNet national plan. The

technical, timing, and procedural requirements placed on opt-out states should be no more comprehensive and stringent than those requirements imposed upon FirstNet and its partner by the FCC. The opt-out procedures must also be practical. The Commission must interpret the Middle Class Tax Relief and Job Creation Act of 2012 (“the Spectrum Act”) in a way that practically, not theoretically, allows states to opt-out.² Otherwise the Commission will have subverted Congressional intent to allow states real (as opposed to illusory) opportunities to opt-out of the FirstNet RAN and develop state alternative plans that maximize public safety benefits for their stakeholders and citizens.

A. Notice of a State’s Opt-Out Decision Should be Easy and Flexible.

1. *Governor’s Designee Should be Able to Give Notice of Opt-Out Decision.*

The Commission seeks comment on how notice should be given for a state’s decision to opt-out of the FirstNet RAN.³ The FNCGB believes that the notice of an opt-out provision should procedurally be as simple as possible. Every state has a designated FirstNet single point of contact or SPOC. To the FNCGB’s knowledge none of the single points of contact is a governor of a state. Consequently, it makes sense that a Governor’s designee be able to give notice of the opt-out decision. Furthermore, in the interest of ease and simplicity, the FNCGB agrees with the FCC’s proposal to have a designated email address to which opt-out notices will be sent.

² See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 §§ 6001-6303, 6413 (codified at 47 U.S.C. §§ 1401-1443, 1457).

³ NPRM ¶ 49.

2. *Upon Providing Notice, States should have a Comparable Amount of Time to “Complete” their RFP as FirstNet had to Award a Contract.*

The FCC seeks comment on when an RFP related to a state alternative plan is considered “complete.” Specifically, the Commission is concerned with the situation where a state submits an RFP within the 180-day statutory deadline but has not received bids or awarded a contract within 180-days.⁴ The Commission asks if a state opt-out plan should be deemed incomplete and subsequently denied in such a situation.⁵

The FNCGB believes that this request for comment strikes at the heart of the fundamental disadvantage that FirstNet is attempting to place on opt-out states in comparison to FirstNet. FirstNet released its RFP on January 13, 2016. If FirstNet were required to adhere to the 180-day deadline that the Commission suggests be placed on opt-out states, FirstNet would have been required to award a contract by July 11, 2016. Instead FirstNet does not expect to make an award until sometime in November of 2016 or later, a minimum of a 113-day difference. Furthermore, FirstNet had years to develop its RFP before submitting it for bid. Under the FCC’s proposed interpretation, an opt-out state must develop an alternative plan, have the FCC approve the alternative plan, develop an RFP, receive and evaluate bids, and make an award all within 180 days. To say that this timeline is unrealistic is an understatement, particularly when states cannot practicably begin working on their alternative plans and RFPs until FirstNet selects a partner, and more appropriately, when FirstNet’s state plans are released.

The FCC has the authority to interpret the meaning of what it means to “complete” an RFP within the 180-day statutory deadline. In light of congressional intent to allow states to opt-out,

⁴ See Pub. L. No. 112-96 §6302(e)(3)(B). Establishing 180-day deadline for “develop[ing] and complet[ing] requests for proposals.”

⁵ NPRM ¶ 51.

the FCC must interpret “complete” in a way that realistically allows for this possibility. Therefore, the FNCGB urges the FCC to adopt an interpretation where “complete” means to publish an RFP. States should then be allowed a period equivalent to the time FirstNet received in order to receive and evaluate bids: roughly 300 days. An interpretation which requires an opt-out state to develop an RFP, receive and evaluate bids, and make an award with 180 days would have the practical effect of making opting-out of the FirstNet RAN all but impossible and render the intent of Congress meaningless. The Commission should strive to avoid this result and interpret the Spectrum Act in a manner that makes the opt-out process as practicable and consistent with Congressional intent as possible.

B. The FCC Should Be as Clear As Possible As to the Requirements for Submitting a State Alternative Plan.

1. *The Commission Should Develop Clear Guidelines on What Should Be Included in an Alternative Plan Application.*

A major concern of the FNCGB is that the submission requirements and evaluation criteria for alternative plans will be uncertain, making it difficult for any state to submit a successful state alternative plan. This concern is amplified by the fact that under the Commission’s suggested interpretation of the Spectrum Act, states would not be able to supplement or amend their applications. If application amendments and supplements are not allowed, opt-out states are left with the impossible task of creating an application for a state alternative plan without any idea of what the Commission wants and getting it right on the first try. It is important to also note that FirstNet itself modified their RFP 15 times in 3 months. Not allowing states to modify their plans would be holding states to a different standard than FirstNet.

The FNCGB believes that the included items for review of state alternative plans be

clearly delineated by the Commission, and that the review of alternative plans be limited to those specific requirements outlined by the Commission. An opt-out state should not be rejected because of lack of clarity on the Commission's requirements. Instead, the FCC must clearly define the specific requirements to demonstrate the adequacy of construction, maintenance, operations, improvements, and interoperability of the state alternative RAN.

In all cases these requirements should be no more stringent than those applied to FirstNet. If the Commission decides to require inclusions that go significantly beyond those applied to or required by FirstNet or its partner, opt-out states will be further placed in a competitive disadvantage to FirstNet. In order to fairly compete with FirstNet, opt-out states must have access to information on the development of FirstNet and its partner's network policies and draft and final state plans. In coordination with FirstNet, the FCC can develop a process to allow access to this information as part of the application process. The FNCGB would recommend the FCC require FirstNet to provide any policies or other information that would be pertinent to the opt-out evaluation no later than 90-days before the final state alternative plans are delivered to states. States should have a clear picture of what the FCC's guidelines are before the state plan is delivered.

In sum, the Commission's goal should be to provide enough clarity on the required information for state alternative plans that a motivated, well-resourced state can fulfill the requirements within a time period comparable to what FirstNet allowed its RFP respondents, and obtain plan approval upon meeting roughly equivalent criteria.

2. *The FCC Should Develop a Standardized Format for submitting Alternative Plans.*

Closely related to the above discussion, the FNCGB agrees with the FCC that a standardized submission form for state alternative plans is one way of ensuring that states considering opt-out have clear information describing FCC requirements, and detailed evaluation criteria by which state alternative plans will be judged.⁶ Using a standardized form should also make the review of state alternative plans easier for the Commission. In the FNCGB's view, the easier and quicker the process to review state alternative plans, the more practical it is for states to complete the opt-out process before statutorily imposed deadlines. Thus, by making the review process easy and straightforward the Commission will further Congressional intent to allow states the opportunity to opt-out.

C. The Commission Should Respect Congressional Intent for a Cooperative-Federalism Model and Work With Opt-Out States to Ensure Viable State Alternative Plans.

1. *Commission Staff Should Be Able, and Encouraged, to Seek Clarification on State Alternative Plans.*

It is inevitable that the sheer size and complexity of state alternative plans submitted to the FCC will lead to some ambiguities and/or lack of clarity in these plans. The Commission should not deny state alternative plans as a result. Instead, the Commission should be encouraged to seek clarification from opt-out states where ambiguities and errors in clarity exist, and provide an opportunity for modification and supplemental submissions as described in Subsection (C)(2) below. Such Commission flexibility will result in better state alternative plans and will further Congressional intent of allowing states a real opportunity to opt-out.

⁶ *Id.* at ¶ 53.

2. *States Should be Allowed to Supplement and Amend State Alternative Plans before the Commission Makes its Final Decision.*

Most cooperative federalism plans, such as that envisioned by the Spectrum Act, allow amendments and supplementation to the initial plan submitted to the Federal Agency. This idea is not foreign to the FCC. The FCC itself set a precedent when it comes to determining the ability for a localized network to be interoperable with a nationwide standard. Prior to the existence of FirstNet, the FCC managed the initial 21 ‘waiver recipients’ that were granted the authority to develop public safety LTE networks in the specified spectrum. As part of this process, entities that were building a network had to develop an ‘Interoperability Showing’ that detailed how their specific network would be interoperable with other networks. The process for developing the interoperability showing was iterative and dynamic in that the FCC and local jurisdictions worked together to develop a solution that fit the requirements. Entities that participated in this effort modified the initial showing multiple times based on feedback from the FCC. The FNCGB would expect a similar process for evaluating state alternative plan applications. This will ensure that the needs of local, tribal, and state first responders are met along with nationwide goal of interoperability.

The FNCGB realizes that Congress envisioned a quick deployment of the NPSBN in the Spectrum Act, and that an endless cycle of amendments and supplements could subvert this intent. However, the FNCGB believes that a solution exists where the quick deployment of the NPSBN can be achieved with added benefit of opt-out states being able to amend and supplement their alternative plans within reasonable periods of time. The FNCGB specifically recommends that the Spectrum Act be interpreted so that States have until the end of the 180-day deadline to have a state alternative RAN plan and an RFP published. Before the final FCC decision on the

subsequent plan, opt-out states should have the opportunity to amend and supplement their state alternative plans as necessary. By implementing the ‘shot clock’ approach once states have submitted their plans for approval, the quick deployment of the NPSBN will be maintained while allowing the flexibility of reasonable supplements and amendments.

D. Public Comment Should only be Allowed if State Alternative Plans can Be Amended.

1. *Public Comment Serves No Purpose if State Alternative Plans are Set in Stone from the Moment They are Submitted.*

The traditional purpose of notice and comment rulemaking is to improve upon an initial plan by taking the input of the public and stakeholders into account. If state alternative plans are not permitted to be amended or supplemented there is no possibility of a state alternative plan improving due to the input of the public and stakeholders. The only real purpose for public comment in such a scenario would be to bolster or detract from the plan without the benefit of the comments having any constructive impact on the ultimate decision. The FNCGB believes this is inappropriate and would only serve to slow the Commission’s review of state alternative plans. In contrast, if amendments and supplements to state alternative plans are allowed (and we strongly believe they should be), expedited public comment may be constructive to creating better state alternative plans. The FNCGB is aware of the importance in moving through this process as quickly as possible and would recommend a ‘shot clock’ approach, which is discussed in further detail below. Consequently, expedited comment should only be permitted if amendments and supplements are allowed to state alternative plans.

2. *To the Extent Public Comment is Permitted, States Should be Able to Designate Portions of State Alternative Plans as Confidential.*

As identified by the NPRM, state alternative plans are likely to contain confidential information that could be proprietary or potentially damaging to local, state, tribal, and/or national security if made public.⁷ It is the FNCGB's belief that it should be the states themselves that determine which information in a state alternative plan is confidential. This would be similar to FirstNet's approach to dissemination of its state plans. FirstNet has stated that they intend to make pre-determined elements of the state plan confidential, and available only to designated people within a state, to protect the safety and security interests of FirstNet, its partner and public safety. If states are given the authority to designate portions of their applications as confidential, the FNCGB believes existing Commission rules allow parties to request confidential treatment for their filings to provide adequate protection for sensitive information.

3. *Under No Circumstances Should FirstNet be Allowed to Comment.*

FirstNet should not be allowed to comment on state alternative plans. FirstNet is a *de facto* competitor to any state that chooses to opt-out and has no incentive to evaluate a state alternative plan on a neutral basis. If FirstNet wishes to impact state alternative plans it can do so by clearly describing their state plan, which will serve as a measuring stick for any state alternative plan. Congress clearly placed the responsibility for the review of state alternative plans in the hands of the FCC and NTIA. FirstNet should not be given the opportunity to appropriate this authority through the notice and comment process.

⁷ *Id.* at ¶ 54.

III. EVALUATION CRITERIA SHOULD BE CLEARLY DEFINED AND BE NO MORE STRINGENT THAN THE REQUIREMENTS PLACED ON FIRSTNET.

A. Evaluation Criteria.

1. *The Commission Should Have a 90-Day Shot Clock Period and Should Announce the Commencement of the Shot Clock.*

The FNCGB strongly agrees with the Commission's interpretation that each alternative plan submitted to the Commission should receive expeditious review and applauds the proposed shot clock for review.⁸ The FNCGB further supports the proposal for a 90-day shot clock period once a state alternative plan has been submitted to the FCC. Given the aggressive timelines, the FNCGB does not believe the shot clock period should be adjusted or suspended for any reason. As explained above, the FNCGB does not support public comment without an opportunity to amend and supplement state alternative plans. If expedited public comment is allowed, then public comment should run concurrently with the shot clock given the extremely tight time frame for states to complete the opt-out procedure.

2. *Amendments to State Alternative Plans Should Be Allowed.*

The FNCGB strongly disagrees with the Commission's interpretation that the Spectrum Act does not allow it to entertain an amended state alternative plan.⁹ As explained in greater detail in Section II(D)(1), allowing amended state alternative plans will lead to better plans and ultimately a better NPSBN. In light of Congressional intent to offer states a real choice to opt-out, the Spectrum Act implicitly refers only to a final approval by the Commission on a state alternative plans.¹⁰

⁸ *Id.* at ¶ 57.

⁹ *Id.* at ¶ 59.

¹⁰ *See* Pub. L. No. 112-96 § 6302(e)(3)(C)(ii).

Nothing precludes the Commission from entering an ‘interim decision’ on a state alternative plan and then allowing that state to submit an alternative or amended plan. Given the proposed deadlines, at most, opt-out states could submit one alternative or amended plan and in the majority of cases there simply wouldn’t be the time to undertake major revisions. Allowing the submission of alternative or amended state alternative plans would only potentially save those plans which were substantially compliant with the FCC’s evaluation criteria but suffered minor deficiencies. Allowing a ‘second look’ at these plans would allow the Commission to uphold Congressional intent of allowing states a real and not illusory possibility of opting-out of the FirstNet RAN.

B. The FCC and NTIA Have Distinct and Separate Roles in Evaluating State Alternative Plans Which Should Be Strictly Observed.

1. *The FCC’s and NTIA’s Review of State Alternative Plans Should not be Duplicative.*

The FNCGB agrees that NTIA and FCC’s role in the review of state alternative plans should not be duplicative.¹¹ However, if the FCC’s decision on technical interoperability is not given any presumptive effect, it is likely NTIA’s review to be duplicative. The Spectrum Act creates clearly defined roles for the FCC, NTIA, and FirstNet in the state alternative plan process.¹² The FCC’s role is to ensure technical interoperability and nothing more.¹³ NTIA’s role is to evaluate an opt-out state’s technical capabilities to operate the RAN, funding support, and ability to maintain ongoing interoperability.¹⁴ If there is no presumptive effect of the FCC’s decision on technical interoperability, nothing prevents the NTIA from revisiting this decision

¹¹ *Id.* at ¶ 62.

¹² *See generally* Pub. L. No. 112-96 § 6302(e)(3)(C)-(D).

¹³ *Id.* at §6302(e)(3)(C)(i)(I)-(II).

¹⁴ Pub. L. No. 112-96 § 6302(e)(3)(D)(i)-(iii)..

during their review of a state alternative plan. To allow NTIA to override the Commission's initial finding on technical interoperability would render the FCC's review of state alternative plans meaningless and break down the clearly defined separation between the NTIA and the FCC contained within the Spectrum Act. Consequently, the FCC's decision on technical interoperability must be given some presumptive effect.

2. *FirstNet's Network Policies Need to be Better Defined.*

The FNCGB agrees that state alternative plans must demonstrate adherence to FirstNet's network policies.¹⁵ However, those network policies do not currently exist. The FNCGB is unclear whether these "network policies" relate to technical interface standards, pricing schedules, detailed descriptions of operating practices, or reporting requirements or other issues to be determined by FirstNet and its partner. As these network policies specifically relate to interoperability, FirstNet must be crystal clear on its initial interoperability requirements if any state is to have a realistic chance of complying with this requirement. The FNCGB would welcome FirstNet working collaboratively with the states and territories to ensure all requirements are identified and shared in a timely manner.

Furthermore, to the extent to which technologies and interoperability requirements change over time, a decision-making process must exist to implement these new network policies. These governance principles must be defined now for any state to reasonably assess the cost of compliance and ultimately the decision to opt-out. These governance principles should further preclude FirstNet from arbitrary and capricious decision making with regard to its network policies. Ultimately, the FNCGB believes that the Commission should implement a standards

¹⁵ NPRM ¶ 63.

board to weigh the benefits and costs of changes to FirstNet network policies against the cost of compliance. Additionally, as explained above, the FCC should set a deadline for FirstNet to submit the appropriate requirements to the FCC and therefore allow states to fully understand the opt-out evaluation process.

3. *Delivery of the Interoperability Compliance Matrix by the Time State Plans are Released is Too Late.*

The Commission states in its NPRM that FirstNet “will deliver the interoperability compliance matrix to the FCC, NTIA, and the States and Territories as expeditiously as possible, but no later than the time of delivery of State and Territory Plans.”¹⁶ Under the 180-day statutory deadline, delivery on the compliance matrix concurrently with state and territory plans is simply too late. Given the complexity that state alternative plans will entail, states considering opt-out need the compliance matrix as soon as feasible. Consequently, the Commission should do everything in its power to expedite the delivery of the matrix.

IV. STATE ALTERNATIVE PLANS SHOULD BE EVALUATED ON TECHNICAL INTEROPERABILITY

A. State Alternative Plans Should not be Denied Because of *De Minimis* Impacts on FirstNet’s Ability to Deploy the NPSBN.

The Commission proposes in the NPRM that “any alternate plan submitted by a state that would require alteration or changes to the FirstNet network to accommodate the state’s proposed RAN would not meet the interoperability requirement under the Act” and seeks comment on this approach.¹⁷ The FNCGB is concerned that this approach, if not better defined, could give

¹⁶ *Id.* See also Richard Reed, FirstNet Chief Customer Officer, *FirstNet Outlines Key Steps for Development of State Plans, Interoperability Requirement* (July 8, 2016) available at <http://firstnet.gov/newsroom/blog/firstnet-outlines-keysteps-development-state-plans-interoperability-requirements>.

¹⁷ NPRM ¶ 67

FirstNet *carte blanche* authority to urge the Commission to deny any state alternative plan. Particularly, the FNCGB is concerned state alternative plans may be denied due to *de minimis* impacts on the FirstNet network.

The Commission must establish clear guidelines with respect to what “adversely impact” and “alteration or changes” to the FirstNet network means.¹⁸ As a guiding principle, the FNCGB believes that adverse impact should be a high bar where significant negative potential impacts are actually demonstrated and quantified. Relevant to this analysis should also be a consideration of the relative benefits of the state alternative plan. If the ultimate goal of the Spectrum Act and FirstNet is to provide coverage to first responders, then a state alternative plan with better coverage but minor impacts to the FirstNet network should not be denied on the basis of that minor impact alone. Consequently, the Commission must define adverse impacts clearly and in a way that excludes minor impacts to the FirstNet network.

B. Evaluation of a State Alternative Plan’s Interoperability with NPSBN Should be Based on Strict Technical Interoperability.

As detailed in Section III(B)(1), the FNCGB generally supports the Commission’s view that its evaluation of state of alternative plans should be based on technical interoperability.¹⁹ This review includes two prongs: compliance with the recommendations of the Interoperability Board and interoperability with the NPSBN.²⁰ The FNCGB is particularly concerned with the “second prong” of the interoperability review.

Interoperability with the NPSBN has not yet been defined by FirstNet. As illustrated by our comments in Section III(B)(3), we are very concerned that interoperability with the NPSBN

¹⁸ See *id.*

¹⁹ See *id.* at ¶¶ 62, 64-65.

²⁰ *Id.* at ¶ 66.

will not be defined until it is technically infeasible for a state to develop a state alternative plan which can demonstrate compliance before the 180-day deadline. To the fullest extent of the Commission's power, it should urge FirstNet to define interoperability with the NPSBN as quickly as possible.

Furthermore, when the Commission conducts its "broader" review under the second prong of interoperability review, that review should still be limited to technical interoperability. FNCGB agrees that the scope of the Commission's review should not be extended to issues other than strict RAN-related interoperability. The Commission should not undertake a 30,000 foot view of interoperability and look into issues such as applications and UE. Instead it should confine its efforts on the strict requirement of technical interoperability. The Spectrum Act clearly limits the Commission's review to technical inoperability and it should abide by that mandate.

C. The Commission Should Allow Self-Certification.

The FNCGB agrees with the Commission's proposal that states be allowed to demonstrate that their RAN will be interoperable with the FirstNet network through certification by the Governor's designee.²¹ The FNCGB is concerned that the alternative proposal, certification by a third-party, will simply take too long. As we have stressed throughout our comments, the 180-day deadline is aggressive. Any additional requirement that makes it less likely that an opt-out state will be able to meet this deadline is strongly opposed by the FNCGB. We believe that both the development of industry standards on which certification would be based and the certification process itself could lead to delays in development of state alternative plans. Given the real potential for third-party certifications to cause delays in the submission of state alternative plans,

²¹ *Id.* at ¶ 71-72.

the FNCGB is opposed to this approach and prefers self-certification.

D. The Commission's Decision on State Alternative Plans Must be Documented.

As identified by the Commission, the Spectrum Act allows for a limited review of the Commission's decision on the interoperability of state alternative plans.²² Given that the Commission's decision is subject to review, opt-out states need a written decision in order to make a fully informed decision on whether to appeal the decision if their alternative plan was denied. Furthermore, states that have their alternative plans approved may want a written decision for their own purposes. Consequently, the FNCGB believes that the Commission should document its decision to approve or disapprove state opt-out requests under the statutory criteria.

V. CONCLUSION

The overarching goal of the Spectrum Act is to dramatically increase capabilities of local, tribal, and state first responders by creating the first nationwide, interoperable, high-speed, broadband network dedicated to public safety. In crafting the Spectrum Act, Congress keenly recognized that the needs of first responders can vary drastically by state. To confront this issue Congress gave the states a choice: join the national RAN plan developed by FirstNet or create a state alternative RAN plan responsive to the local needs of local, tribal, and state first responders and interoperable with the national network.

The Commission's decision on how it will evaluate the ability of state alternative plans to meet the technical interoperability requirements may make this choice simply illusory. Specifically, statutory right created by Congress will become illusory as a result of the Commission's creation of deadlines which are impossible to meet, unknowable evaluation

²² Pub. L. No. 112-96 § 6302(h)(2).

criteria, and an evaluation process which is inflexible and inequitable. The FNCGB strongly urges the FCC to respect Congressional intent and to give states a real choice

To respect Congressional intent, the FNCGB strongly believes the Commission must develop a process that is fair, equitable, and does not artificially hinder the ability for states to exercise their statutory right of choice. In practical terms this means that: 1) states must be held to the same standard of FirstNet regarding timing for awarding contract pursuant to an RFP; 2) the FCC's process for evaluating state alternative plans must be expeditious, clear, and focused on the technical aspects of a state alternative plan; 3) states must be given the flexibility to supplement and amend their initial submissions to the FCC; and 4) the overall focus of the FCC's alternative plan review process must allow a state to exercise their right to implement a state-specific RAN so long as that plan meets the basic provisions outlined by the Spectrum Act. The FNCGB believes that by observing these simple principles the FCC will have fulfilled the Congressional intent of the Spectrum Act and created the opportunity for the creation of a NPSBN that better serves the needs of first responders nationwide.

Respectfully submitted,

THE FIRSTNET COLORADO GOVERNING BODY

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